STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 14, 2005
v	No. 252436 Wayne Circuit Court
JOHN FITZGERALD WOODS, Defendant-Appellant.	LC No. 03-004249-01

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Defendant was convicted of receiving and concealing stolen, embezzled or converted property or motor vehicle over $1,000 but less than $20,000, MCL 750.535(3)(a), and concealing or misrepresenting the identity of a motor vehicle with the intent to mislead, MCL 750.415(2), following a bench trial. The trial court sentenced defendant as an habitual fourth offender, MCL 769.12, to concurrent terms of two and a half to five years in prison for both convictions. Defendant appeals as of right. The record reveals that the trial court did not abuse its discretion when it denied defendant's request for substitute counsel, and defense counsel's disclosure of plea bargain expectations did not render counsel ineffective. Further, we are not persuaded by defendant's challenge to the sufficiency of the evidence, the trial court's recitation of fact finding, or the claimed error in sentencing in his Standard 4 brief. For those reasons, we affirm.

Defendant first argues that the trial court abused its discretion when it failed to adequately inquire into defendant's request for substitute counsel. When reviewing a trial court's decision regarding substitution of appointed counsel, this Court reviews under an abuse of discretion standard. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). "An abuse of discretion is found when the trial court's decision is so grossly contrary to fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling." *People v Callon*, 256 Mich App 312, 326; 662 NW2d 501 (2003).

An indigent defendant has a right to counsel, but is not entitled to the lawyer of his choice simply by requesting that appointed counsel be replaced. Appointment of substitute counsel is warranted only upon a showing of good cause and if substitution will not unreasonably disrupt the judicial process. *Traylor, supra* at 462. Good cause to substitute counsel exists if a legitimate difference of opinion develops between a defendant and his appointed counsel

regarding a fundamental trial tactic. *Id*. When a defendant asserts that his assigned attorney is not adequate or diligent, or is disinterested, the trial court should hear his claim and, if there is a factual dispute, take testimony and state its findings and conclusion on the record. *People v Ginther*, 390 Mich 436, 441-442; 212 NW2d 922 (1973).

A review of the record reveals that defendant did not provide any evidence of a "legitimate difference of opinion" regarding "a fundamental trial tactic" between himself and defense counsel requiring substitution. *Traylor, supra* at 462. While forgetting he met with defense counsel and participated in two pretrial proceedings, defendant argued that he should be appointed substitute counsel because he had only seen "[his] lawyer once, one time." Defendant's assertion arguably could have established counsel was "disinterested." A showing of disinterest generally requires the trial court to further inquire into defendant's claim. *Ginther, supra* at 441-442. However, the trial court knew defendant's claim was unfounded because the trial court had presided at two pretrial proceedings in the matter involving counsel and defendant. Each time counsel adequately represented defendant and defendant never mentioned a desire for substitute counsel. Defense counsel surmised that defendant was motivated in his request for substitute counsel by counsel's failure to secure an ideal plea. The trial court did not abuse its discretion when it failed to further look into defendant's claim, or when it denied defendant's request for substitute counsel. *Traylor, supra.*

Defendant next claims ineffective assistance of counsel because counsel disclosed to the court that defendant's ideal plea would involve a maximum of one year jail time. This Court's review of a claim of ineffective assistance of counsel without a prior evidentiary hearing is limited to the facts contained in the record. *People v Rodriguez,* 251 Mich App 10, 38; 650 NW2d 96 (2002).

To establish ineffective assistance of counsel, a defendant must show: (1) that counsel's performance was below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Defense counsel's disclosure of an ideal plea did not amount to an admission of guilt and was therefore not prejudicial. In response to defendant's request for a new attorney, defense counsel surmised that defendant's request was motivated by counsel's inability to secure a plea agreement that provided defendant a one year maximum jail term. Statements connected to plea bargaining are generally not admissible as evidence. MRE 410; *People v Stevens,* 461 Mich 655, 660-661; 610 NW2d 881 (2000). Because judges are presumed to follow the law absent proof to the contrary, the disclosure should not, and the record does not suggest that the disclosure affected the outcome of the proceedings. *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). We conclude the claim of ineffective assistance of counsel lacks merit.

In his Standard 4[1] brief, defendant challenges the sufficiency of the evidence supporting his convictions. When reviewing the sufficiency of the evidence presented in a bench trial, this

[1] Formerly Standard 11. See Administrative Order No. 2004-6 replacing Administrative Order No. 1981-7.

Court views the evidence de novo and in the light most favorable to the prosecutor to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. Deference is given to the trial court's determinations of credibility. *People v Sherman-Huffman*, 241 Mich App 264, 267; 615 NW2d 776 (2000).

In order to convict a defendant of receiving or concealing stolen property worth between $1,000 and $20,000 the prosecution must prove: "(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen." *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002); MCL 750.535(3)(a).

The vehicle in question was stolen in January 2002, and Donald Heard reported its theft to the Romulus Police. Heard testified the vehicle was worth more than $1,000, and that he received $1,000 trade in value for the vehicle after it was returned. On the element of possession, defendant told Maria Swayne, the complainant's finace´, when she confronted defendant about the ownership of the vehicle that the truck was his, the VIN number in public view came up as being registered to defendant, and defendant gave Officer Michael Novak a certificate of title for the vehicle together with his insurance certificate for the vehicle. While the public display of the VIN was registered to defendant, the concealed VINs demonstrated after identification that the vehicle was the stolen vehicle owned by the complainant. Finally, Carl Collett testified that he sold defendant another vehicle for $94.25, which had an identical VIN to the VIN in public view on the vehicle in question. The act of replacing the stolen vehicle's VIN with the one assigned to defendant infers both intent and actual possession. From the evidence presented and inferences drawn from the evidence, a rationale trier of fact could conclude beyond a reasonable doubt that defendant possessed the vehicle with knowledge the vehicle was stolen.

Next, a person who, with the intent to mislead another as to the identity of a vehicle, conceals or misrepresents the identity of a motor vehicle or mechanical device, by removing or defacing the manufacturer's serial number or the engine or motor number on the vehicle, or by replacing a part of the vehicle or device bearing the number with a new part upon which the proper number has not been stamped, is guilty of a felony. MCL 750.415(2). To be guilty of the offense does not require an overt act of misrepresentation or concealment. Rather, possession of a vehicle or device with the number removed, defaced, destroyed or altered or with a part bearing the number replaced by one on which the number does not appear is prima facie evidence of the offense. *People v Coon*, 200 Mich App 244, 246-247; 503 NW2d 746 (1993).

As discussed above, defendant clearly possessed the vehicle. Defendant told both Swayne and Nowak the vehicle was his, attempted to get into the vehicle, and had registered plates and insurance on the vehicle in his name. From this evidence, a rational trier of fact could reasonably conclude that defendant had possession of the vehicle in question. Furthermore, the VIN in public view that was registered to defendant was different from the VIN on the door, which was the actual VIN number of the stolen vehicle. Plainly, a rational trier of fact could reasonably conclude that the manufacturer's serial number had been removed, altered or defaced. Since possession of a vehicle with the number removed, defaced, destroyed or altered is prima

facie evidence of the offense, there was sufficient evidence to convict defendant of this charge. *Coon, supra* at 246-247.

Defendant also argues he was denied his constitutional right to due process and a fair trial when the trial judge failed to include any reference to defendant's testimony in his findings of fact and conclusions of law. When reviewing the sufficiency of a trial court's findings of fact, this Court determines whether the findings of fact are sufficient to aid appellate review. *People v Shields*, 200 Mich App 554, 559; 504 NW2d 711 (1993). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law regarding contested matters. MCR 2.517(A)(1); MCR 6.403; *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). The purpose of requiring the specific findings is to reveal the law applied by the factfinder to aid appellate review. *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989). The findings and conclusions regarding contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). If the findings are insufficient, remand for additional findings is necessary. *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988).

The trial court stated its findings of fact and conclusions of law on the record as follows:

> Well, this Court had an opportunity to listen [sic] numerous witnesses in this particular cause.
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> The first witness that this Court listened to was Mr. Heard. He did tell this Court that this particular vehicle, 1989 Ford Ranger, blue and white, was stolen. He did say that the value was in excess of one thousand dollars.
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> He did also state that he traded it in for one thousand dollars. And that he gave no one permission to take his vehicle. And he specifically stated that he did not give this defendant permission to take his vehicle.
>
> Mr. Heard also stated that once he saw the vehicle again, after it was stolen. He retrieved it. He did state that the ignition column was destroyed on the vehicle.
>
> After listening to all the witnesses in this particular cause, there is no doubt in this Court's mind that all the elements to Counts Two and Three, have been proved beyond a reasonable doubt. And that is what I am going to find [defendant] guilty on, Counts Two and Three.

Defendant argues that the trial court's findings did not "mention in any manner, shape or form the testimony of the defendant." Though a trial court is required to consider all testimony and evidence, it is not required to mention all testimony or evidence in its findings of fact and conclusions of law. *Smith, supra* at 235; *Lewis, supra* at 268. The trial court stated on the record that it listened to the testimony of "numerous witnesses," which certainly included

defendant. The court then detailed the facts it found relevant. The trial court did not err when it did not mention defendant's testimony in its findings of fact and conclusions of law. *Armstrong, supra* at 184. Because the trial court's findings of fact and conclusions of law were sufficient, remand is unnecessary.

Defendant's final issue on appeal is that he was denied his due process rights when he was sentenced to two and a half to five years in prison for his concealing or misrepresenting the identity of a motor vehicle with the intent to mislead conviction, when the crime carries a statutory maximum of four years in prison. Generally, when reviewing a trial court's imposition of a sentence, this Court reviews for an abuse of discretion, but if the defendant fails to preserve the issue through objection at sentencing, as is the case here, this Courts review is limited to whether there was plain error which affected substantial rights. *People v Sexton*, 250 Mich App 211, 227-228; 646 NW2d 875 (2002).

Defendant's conviction under MCL 750.415(2) carries a four year maximum prison sentence. "If a person is convicted of a felony for which no punishment is specially prescribed, the person is guilty of a felony punishable by imprisonment for not more than 4 years . . . ." MCL 750.503. However, the trial court sentenced defendant as a fourth habitual offender. When being sentenced as a fourth habitual offender under MCL 769.12, if the subsequent felony is punishable by imprisonment for a maximum term of less than five years, the court may sentence the offender up to a maximum term of fifteen years in prison. MCL 769.12(1)(b). Therefore, it was not error for the trial court to sentence defendant to two and a half to five years' imprisonment for his conviction for concealing or misrepresenting the identity of a motor vehicle with intent to mislead.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello